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Supreme Court U.S.
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167-38

IN THE

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 17, Original.

EX PARTE: IN RE JOSEPH T. H. HALL, PETITIONER.

Motion of Petitioner for a Peremptory Writ of Mandamus, Notwithstanding Answer of Respondents, and Brief in Support of the Same.

EDWIN FORREST,
Attorney for Petitioner.

LAW REPORTER PRINT.

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Supreme Court of the United States.

No. 17. Original.

EX PARTE: IN THE MATTER OF
JOSEPH T. H. HALL, PETITIONER.

Petitioner's Motion for Peremptory Writ of Mandamus.

And now comes the petitioner and moves the court to issue a peremptory writ of mandamus, notwithstanding the return of the respondents, directed to the judges of the Court of Claims, respondents hereto, commanding and directing the said judges to render and cause to be entered judgment in favor of petitioner, and against the District of Columbia, for the sum of $8,664.19, as of the date of March 2, 1897, the day of the filing of the mandate in said Court of Claims, as in and by the petition herein prayed.

JOSEPH T. H. HALL,
Petitioner.

EDWIN FORREST,
Attorney for Petitioner.

IN THE SUPREME COURT OF THE UNITED STATES.

EX PARTE: IN THE MATTER OF JOSEPH T. H. HALL, Petitioner. } No. 17. Original.

Brief of Petitioner.

STATEMENT OF CASE.

The petitioner, as claimant in a case against the District of Columbia, filed a petition in the Court of Claims under the Act of Congress of February 13, 1895 (28 Stats. at L. 664), obtained a judgment against the said District in said court on June 22, 1896, for the sum of $8,664.19, due and payable January 1, 1877 (4); from the judgment the defendant appealed to this court, where the case was docketed on the October term, 1896, as No. 619, wherein the District of Columbia, was appellant, and said Hall, appellee; upon hearing the said judgment was reversed (5), and the cause remanded to the Court of Claims—

> "that such execution and further proceedings be had in said cause in conformity with the opinion and judgment of this court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding" (5);

that the mandate of this court was filed in the Court of Claims March 2, 1897, and motion made for judgment thereon in accordance therewith, and opinion of court for $8,664.19—interest thereon being expressly waived—but the judges of the Court of Claims refused to grant said motion, although attorney for District, in open court, consented; such action of the court being founded expressly upon ground that there was then pending in Congress legislation affecting claims filed under Act of February 13,

1895 (6); that subsequently, and on March 15, 1897, Court of Claims made an order that no further proceedings be had in the case (7).

The petitioner upon these facts made application to this court for leave to file a petition for writ of mandamus, and prayed that upon the allowance of such application a rule to show cause might issue, and on answer of the respondent thereto, a peremptory writ of mandamus issue directing and compelling the judges of the Court of Claims to render judgment in favor of petitioner and against the said District of Columbia for the sum of $8,664.19, as of March 2, 1897.

This court by order of March 29, 1897, granted leave to file the petitioner's application, and issued a rule thereon to show cause at 12 o'clock noon, April 5, 1897, why a writ of mandamus should not be granted as prayed.

On the return day the respondents answered, and the only matters presented, outside of those alleged in the petition, are—

> "That on the 2d day of March, 1897, that not being a motion day according to the practice of said court, was presented in open court the mandate . . . together with a motion for entry of judgment for the sum of $8,664.19; that said motion was presented upon a day when the court was engaged in the regular trial of cases, and according to the practice of the court was received without argument, and taken under consideration for decision thereafter; . . . that on the said 2d day of March, 1897, and before the court in the ordinary course of its business had been able to take up for consideration the motion for judgment in favor of said petitioner, or to examine the opinion of the Supreme Court, referred to in the mandate and set forth in the petition, the court adjourned to the 8th day of March, and while so adjourned"

Congress passed Act of March 3, 1897.

Thereupon the petitioner moved for the issuance of a per-

emptory writ of mandamus, notwithstanding said return, as in and by his petition prayed.

ARGUMENT.

According to the practice of this court, of long standing, leave is not granted to file an application for a writ of mandamus to an inferior court, nor is a rule to show cause issued thereon, unless the petitioner presents a *prima facie* case for the intervention of this court.

Ex parte David Taylor, 14 How. 4.
The P. M. General *vs.* Trigg, 11 Pet. 173.

In this case the court, by its order of March 29, 1897, having given leave to file application and ordered the respondents to show cause why a writ of mandamus should not issue as prayed by the petitioner, expressly held that a *prima facie* case was made, and the only question now before the court is, whether the respondents have by their return to the rule issued shown any cause why the relief prayed should not be afforded, or changed the aspect of the petitioner's position at the time of the issuance of the rule.

By an inspection of the return, and a comparison of the same with the petition, it will be seen that the averments of the latter, to wit: that the court (judges of the Court of Claims) announced that it had seen the opinion of this court, then in the possession of counsel for the petitioner; that the petitioner expressly waived any interest for and on account of the said judgment; that the attorney representing the said District of Columbia was present in court and openly stated to the said court that he saw no reason why the petitioner should not have judgment in accordance with the said motion, and then and there gave his consent thereto; and that the Court of Claims then and there refused to grant the said motion upon the express ground that there was then pending in the Congress of the United States legislation affecting claims filed under the Acts of

Congress referred to in the petition (June 16, 1880, and February 13, 1895), and the jurisdiction of the said Court of Claims to further entertain the same, are not denied, and therefore are to be taken as true.

> "If the respondent does not deny the material allegations, his failure is to be treated as an admission of the fact the same as if admitted in express terms."
>
> State *vs.* Haws, 43 Ohio St. 16.
> Am. & Eng. Encyc., Vol. 14, 231.

> "Every intendment will be made against a return which fails to answer important facts."
>
> People *vs.* Ohio Grove, 51 Ill. 191.

> "The averments of the return must be certain. The certainty required by the common law is, by some of the cases, stated to have been certainty to every intent, and therefore greater certainty than is requisite to a plea. Other cases have decided that the certainty or strictness which prevailed at common law was the same as that which governed estoppels, indictments or returns to writs of *habeas corpus*, and as to them it is laid down that nothing is to be taken or construed by intendment or inference, so that all material facts should be positively and distinctly alleged. . . .
>
> "If the return deny the supposal of the writ, the traverse must be single, direct and certain. The rule being that every distinct and material allegation contained in the writ must, if it be intended to contradict them, be traversed.
>
> "The question in considering the sufficiency of a return by way of traverse must be whether, if the supposal of the writ be true and sufficiently averred, an action for a false return can be certainly maintained against the defendant; or, in other words, if the facts averred in their return, strictly construed as stated, may be true consistently with the truth of the suggestion of the writ, then the return is vicious."
>
> Tapping on Mandamus, 353.

> "The return should, for the purpose of making an issue, set up a positive denial of facts stated, or should state other facts sufficient to defeat relator's right."
>
> Am. & Eng. Ency., Vol. 14, 230, and note of authorities.

The apparent object of so much of the return as sets up matter not appearing upon the face of the petition, is to have it appear that the court did not have an opportunity to examine and consider the mandate and opinion of this court, and further that the motion of the petitioner was made on a day not a motion day, under the rules of practice of the Court of Claims. This seems to be the burden of the defense to the prayer of the petition. The petition, however, states in precise, distinct and unequivocal terms, that the motion for judgment was made for the sum of $8,664.19, interest expressly waived for any amount; that the attorney representing the District consented to judgment by the petitioner and that the court refused such judgment upon the express ground that there was then pending in the Congress of the United States legislation affecting claims filed under the acts of Congress referred to and the jurisdiction of the Court of Claims to further entertain the same. As these statements of facts were not denied, they are, as hereinbefore contended, to be taken as true. They show that the Court of Claims did consider the motion of the petitioner for judgment, otherwise how could they have given a reason for its refusal to grant the motion. In addition the respondents do not in their return allege that their refusal to act was because it was not a motion day according to the practice of said court, nor do they say that they had not seen the opinion of this court as alleged in the petition.

The Only Question Raised and Decided in the Original Case, No. 619 (October Term, 1896).

The amount, $8,664.19, for which claimant obtained

judgment in the Court of Claims, was not disputed or attacked in this court by the District of Columbia.

The only question raised was: Was the claimant Hall entitled to have his judgment due and payable as of January 1st, 1877, as found by the Court of Claims, thus giving him interest from the latter date; or as put by counsel for the District of Columbia in his brief:

> "The common point raised by these appeals here is, that these claimants are not entitled to interest prior to judgment under the act of 1895." (Appellants brief 17.)

And this was the only error assigned (do 18). This point was the only one passed upon by the court in its opinion. This case was heard in this court in connection with the case of the District of Columbia *vs.* George E. Johnson (No. 617, October Term, 1896), and the opinion of the court was delivered in the latter case and is found in advance sheets of opinions of Supreme Court furnished by the Lawyer's Edition thereof and printed in Vol. 9, pp. 426–430. I quote therefrom as follows:

> "There is no element of a legal or an equitable claim within the proper meaning and signification of those words on the part of any of those who will profit by the Act of 1895, against the municipal authorities of the District. That act bestowed a pure and simple gift. . . . The statute of 1895 simply, as we have said, conferred a gratuity upon the persons covered by its provisions, and the reasonable construction of such an act is to say that the gratuity thus given becomes 'due and payable' only from the time when the act which gave it was passed. To make the amount of the gratuity thus given 'due and payable' twenty years before the passage of the act giving it, so as thereby to allow interest from that time upon the amount of such gratuity, requires the clearest and most certain expression of legislative will to that effect. We do not find any such expression in the act here under consideration. Although

> it permits the Court of Claims to allow the rates used and paid by the Board of Public Works, yet, as that allowance is a mere gift, the further burden of twenty years' interest on it should not be added to the gift without the use of the very plainest language.
>
> "For these reasons we think the Court of Claims erred in holding that any portion of the moneys which might be due the claimants, and which arose by virtue of the Act of 1895, became due and payable at any time before the passage of that act."

And this court added in the Hall Case (619) that:

> "For the reasons mentioned in the foregoing cases (617, 618) the judgment of the Court of Claims in this case must also be reversed, and the cause remanded for further proceedings not inconsistent with that opinion."

The mandate of this court in this case (No. 619) is in the usual and customary form (Petition of Hall, No. 17 Orig., p. 5), reversing the judgment of the Court of Claims, remanding the cause "for further proceeedings not inconsistent with the opinion of this court" and commanding that such execution and further proceedings be had in the cause—

> "in conformity with the opinion and judgment of this court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding."

It is plain from the opinion and the mandate, that the only point upon which this court differed from the Court of Claims, and upon which a reversal was had, was the question of interest, and that as to the judgment of the Court of Claims in favor of the claimant (Petition of Hall, No. 17 Orig., p. 4), it was in all other respects affirmed.

In the case of Gaines against Caldwell, 148 U. S. 228, this court says:

> "It is contended for the respondent that the decree of this court was one absolutely reversing the decree

of the Circuit Court; that the Circuit Court had a right, therefore, to proceed in the case, in the language of the mandate, not merely 'in conformity with the opinion and decree of this court,' but also 'according to right and justice;' and that, therefore, it had authority to permit the defendant Rugg to take further testimony in support of his exceptions, 'by way of defense to the title to the lands in controversy,' and to set down the cause 'upon the issues formed by the pleadings and exceptions aforesaid as to the title to said lands;' in other words, that the whole controversy was to be reopened as if it had never been passed upon by this court as to the title and possession of the land. This cannot be allowed, and is not in accordance with the opinion and mandate of this court."

. . . . . .

"It is, we think, very plain that so much of the decree of the Circuit Court of November 11, 1887, as was not disapproved by this court still stands in full force. Whatever there is to impair that decree must be sought for only in the opinion, decree, and mandate of this court." . . .

"What it remained for the Circuit Court to do was only the taking of the account in the manner indicated by this court. This court, in its opinion, overruled all the objections taken to the title, and to say that its decree virtually reversed the whole decree of the Circuit Court is to say that it has done that which it said in its opinion ought not to be done. Under its opinion, it intended to reverse only a part of the decree, and that is all that it did. It substantially affirmed that part of the decree below which related to the title, and virtually only modified the entire decree, and that only in respect to taking the account."

Petitioner entitled to Mandamus.

As the original judgment of the Court of Claims was not disturbed, save on the question of interest, by the opinion of this court, and the mandate issued in accordance therewith,

on the appeal by the District of Columbia, it was the plain ministerial duty of the judges of the Court of Claims, to enter a judgment as moved by the petitioner Hall on the filing of the said mandate in the said Court of Claims, and having failed so to do, and not having shown any sufficient reason in their answer for their refusal, the said respondents should be compelled by the peremptory writ of mandamus to be issued by this court, to enter judgment in accordance with the motion herein made and the prayer of the relator's petition.

EDWIN FORREST,
Attorney for Petitioner.

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ARGUMENT FOR RESPONDENT.

In the Supreme Court of the United States.

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ARGUMENT FOR RESPONDENT.

The order of the Supreme Court was that the judgment of the Court of Claims be reversed and the case be remanded for further proceedings not inconsistent with the opinion. This of course made necessary judicial consideration of the opinion of the Supreme Court and of the record of the case. It can not be assumed that with the many thousand cases pending before the Court of Claims the judges have memory in fact of the contents of the record of each case. While it is freely conceded that an examination of the record would disclose that the amount of the judgment prayed for is correct, and that if the law had remained unchanged the duty of the court, when in the course of its business it could make the necessary examination of the opinion and of the record of the case, to enter judgment for that

amount, it is not to be assumed that at any moment when a claimant presents a motion for a judgment to which he is entitled the court has all the facts presently in mind, so that it could render judgment forthwith.

The custom and practice of the Court of Claims is to render judgments or make their decisions upon motions on some Monday following the submission of a case or a motion. It is substantially never done at the time the motion is first presented in open court.

The attitude of the petitioner is that if a motion is for what he is entitled to, the court must immediately interrupt its consideration of all other business, no matter how pressing, and momentarily render its judgment. This is a theory of the duty of courts upon which we do not need to comment, especially when a court, as here, has pending on its docket more than 20,000 cases, and has under consideration cases the arguments of which have been fully completed, reaching frequently 50 and more cases at the same time. No good reason is apparent why attention from those earlier submitted cases should have been withdrawn to be devoted to this motion.

The alleged consent of the representative of the Government, which is so strenuously urged by the petitioner, is never received by the Court of Claims as conclusive. It is understood that the representative of the Government, being a public officer, has no power to consent away any rights which exist under the law, and while his consent is recognized as an expression of opinion on his part, it is never deemed by the court as conclusive, they feeling

the duty to rest upon them to see that judgments are right and that they can not throw the responsibility entirely upon the Government counsel.

It should be said in this connection, however, that the judges read the allegations of the petition as signifying no more than the conclusion of the petitioner that Government counsel consented because he said, as quoted in the petition, that the Government counsel "openly stated to the said court that he saw no reason why this petitioner should not have judgment in accordance with said motion," which is a true statement of what transpired.

While it is, as stated above, freely conceded, after an examination of the record and the facts proved on the former trial of the case of Hall, in the light of the opinion of the Supreme Court upon the appeal therefrom, that he would have been, but for the change of the law, entitled to the rendition of a judgment in his favor for the amount moved, whenever the opportunity came that the Court of Claims could judicially act thereon in deference to the other business before it, the question which was presented to the Court of Claims before when that time came, and which is still before them, is whether, under the act of Congress passed subsequently to the decision of the case in the Supreme Court, they had any power to render judgment or take any other step. That act of Congress is drastic. It was that the act of February 13, 1895, enabling the rendition of a judgment in favor of this claimant, "be and the same is hereby repealed, and all proceedings pending shall be vacated, and no judgment rendered heretofore in pursuance of

said act shall be paid." It seemed to the court that a motion made and not yet decided was clearly within the language of that act pending and was thereby vacated. No question seems to be raised by the claimant as to the force or validity of the act, and it seemed to be the duty of the trial court to obey the language of an act of Congress rather than assume any invalidity therein.

The Court of Claims is, however, I am sure, entirely ready to yield to the view of the Supreme Court as to the force and efficacy of this act as interrupting proceedings then pending. The undersigned respectfully submits whether, if said act be deemed so efficacious, it would not be proper that the Supreme Court should recall its mandate in the case in question, to the end that it may be modified so as to avoid any apparent conflict between the direction given to the Court of Claims thereby and the direction given to that court by Congress in the act of March 3, 1897? If that be deemed necessary or advisable, a motion will then be made to treat similarly the mandates in the three other appeals in this jurisdiction.

JOSHUA ERIC DODGE,
Assistant Attorney-General.